

DATE: August 8, 1985

TO: J. P. Casey, Engineering and Development  
Director

FROM: City Attorney

SUBJECT: North City West Facilities Benefit Assessment -  
Annual Review

By memorandum dated July 1, 1985, you requested our opinion regarding the legality of establishing a credit system for assessments paid into the North City West Facilities Benefit Assessment District on or after July 1, 1985, but prior to the City Council establishing revised assessments for the district by way of the Facilities Benefit Assessment annual review process.

#### BACKGROUND

In August 1980, the Council of The City of San Diego (the "Council") adopted the Facilities Benefit Assessment Procedural Ordinance which allows San Diego to designate "areas of benefit" to be assessed for public improvements, apportion costs for the

improvements among the parcels in the areas of benefit, and levy the assessments against each parcel constituting a lien on it. The property owner must pay the lien in whole or in part when applying for a building permit. The money collected is to be placed in separate City accounts used only for the public improvements for which the assessments are levied.

In April 1982, San Diego prepared the North City West Public Facilities Financing Plan. It provides for the use of several financing methods which, consistent with the General Plan, require the developers of North City West to pay for North City West Public Facilities. Part of that plan calls for the financing of the facilities by using Facilities Benefit Assessment(s) ("FBA").

In May 1982, the Council passed Resolution No. R-256462, adopting the North City West Public Facilities Financing Plan, designating most of North City West as an area of benefit requiring the public facilities mentioned above to be financed by the FBA.

In July 1982, the Council adopted Resolution No. R-256841, directing James J. Holodnak, the then Acting City Auditor and Comptroller, to release funds collected from the North City West land owners for expenses incurred in connection with the

preparation of the North City West FBA. Mr. Holodnak refused and litigation ensued. The litigation was resolved in favor of The City of San Diego in June 1984. *The City of San Diego v. James J. Holodnak, et al.*, 157 Cal.App.3d 759 (1984).

During the two-year litigation period, the annual review permitted by Municipal Code Section 61.2212 ("Annual Adjustment of Facilities Benefit Assessments") was not conducted by the Council. During the same period, however, the Council eliminated certain parks originally designated in the FBA by approving the precise plans for Neighborhoods 4, 5, 6, and 7.

The Engineering and Development Department is now preparing North City West's first annual review. Preliminary analyses for Fiscal Year 1986 anticipates significant reduction in the amounts to be assessed for all properties.

Although data is only preliminary, reductions could be as much as Four Thousand Dollars (\$4,000.00) for a single-family dwelling unit and as much as Three Thousand Dollars (\$3,000.00) for a multiple-family dwelling unit. Similarly, the reduction for industrial and commercial properties could be as much as Five Thousand Dollars (\$5,000.00) an acre. Some of the reasons for these reductions in assessments include the elimination of approximately Sixteen Million Dollars (\$16,000,000.00) of previously planned parks, and reductions in assumed inflation

rates applied to future projects from twelve percent (12%) per year to rates that are less than ten percent (10%) per year.

### ISSUES PRESENTED

For purposes of our analysis, your concerns may be more specifically stated as follows:

1. Is the Council required to conduct an annual review of North City West FBA for Fiscal Year 1986?
2. What impact does the Council's prior deletion of the parks have on the review process?
3. What is the effective date of North City West FBA annual review?
4. If a reduction occurs in the FBA, does the Procedural Ordinance permit a credit to property owners who pay assessments between the commencement of the fiscal year and the actual date of the Council's annual review?

### ANALYSIS

The FBA is based on a theory of benefit. Municipal Code Sections 61.2200 et seq., the FBA Procedural Ordinance, states in pertinent part:

In order that the burdens of the cost of

constructing the public facilities may be borne by all of the lands benefited thereby, Areas of Benefit may be designated and Facilities Benefits Assessments, as defined in Section 61.2202, chargeable to and against such lands may be imposed in accordance with procedures set forth in this Division. (Emphasis added).

Benefit is specifically defined in Section 61.2202, Subsection (b), which reads as follows:

"Area(s) of Benefit" means lands which are designated as receiving special benefits from the construction, acquisition, and improvement of Public Facilities Project(s) as established by a Resolution of Designation adopted by the City Council pursuant to this Division. (Emphasis added).

The need to assure fairness and equity in the spread of the assessment lead to the inclusion of Section 61.2212 in the FBA Procedural Ordinance. Section 61.2212, entitled "Annual Adjustment of Facilities Benefit Assessments," states:

The City Council may, annually after the adoption of the Resolution of Designation and subject to the requirements set forth in Sections 61.2203 through 61.2209, cause an adjustment to be made in the Facilities Benefit Assessments established by the

Resolution. The adjustments may reflect increases or decreases in the actual cost of the Public Facilities Project or if the Public Facilities Project has not yet been constructed then the estimated cost of the proposed capital improvements as reflected in changes in the scope of the Public Facilities Project or any other indices as the City Council may deem appropriate for this purpose. The modifications may also reflect

changes in the improvements proposed to be constructed as well as the availability, or lack thereof of other funds with which to construct the capital improvements. (Emphasis added).

The deletion of neighborhood parks by Council action in 1982 and 1983 constituted "changes in the improvements proposed to be constructed." While annual reviews are not mandated by Municipal Code Section 61.2212, a significant change in proposed improvements legally requires some review to maintain valid and equitable assessments. Since a property owner cannot benefit from an improvement that is not constructed, the Council should notice and hold an annual review for North City West. Furthermore, the Council should revise the assessments to reflect its previous action in deleting several neighborhood parks.

The effective date of any revisions made to the FBA is not specifically set forth either in the FBA Procedural Ordinance or in the Public Facilities Financing Plan for North City West.

There are, however, several references contained within the development, phasing, and cost analyses to the fiscal year as being the basis for all calculations. Making the annual review follow this analysis would appear logical, appropriate, and legally justifiable.

In the case of North City West, the Council will consider revisions to assessments a number of weeks after the commencement of the fiscal year. Hence, a credit to property owners effective July 1, 1985, is necessary. The FBA Procedural Ordinance accommodates this situation. Section 61.2215, entitled "Reimbursement and Refund" states, in Subsection (a):

In the event of an annual adjustment of assessment as provided by Section 61.2212, which reduces the Facilities Benefit Assessment, amounts in the special fund which are no longer required shall be refunded to the current owner(s) of the property as shown on the last equalized assessment roll in proportion to the amount of the original payments.

This section would permit a credit to property owners for excess amounts paid after July 1, 1985, but prior to Council revision of

the assessment.

## CONCLUSION

The Council is required to hold a review of the North City West FBA for Fiscal Year 1986. The Council's prior action

deleting some neighborhood parks constitutes "changes in the improvements to be constructed" and warrants the appropriate revision of the assessments. The effective date of the North

City West FBA annual review should be July 1, 1985 (the commencement of the fiscal year). If the review takes place after the July 1st commencement of the fiscal year, the FBA Procedural Ordinance permits a credit to property owners.

JOHN W. WITT, City Attorney

By

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